Remarks/Arguments:

The Declaration was found to be defective. Applicant's representative is obtaining a new Declaration and will submit the new Declaration shortly.

The disclosure has been objected to. The disclosure has been appropriately amended. Withdrawal of the objection is respectfully requested.

The claims have been objected to because of the way certain claims have been cancelled. The error has been corrected.

Claims 12 and 13 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Saito (U.S. 5,901,339) in view of Durden (U.S. 5,003,384) and Lett (U.S. 5,592,551). It is respectfully submitted, however, that these claims are patentable over the art of record for the reasons set forth below.

Applicant's Fig. 1 includes a server apparatus on the left side of the figure. The server apparatus includes information providing apparatus 2. Information providing apparatus 2 receives an information signal from the subscriber apparatus (shown on the right side of the figure). The information signal is capable of indicating that the output from the information providing apparatus is being directed to display terminal 10 without being recorded. The information signal is also capable of indicating that the output signal from information providing apparatus 2 is capable of being recorded in recording/reproducing apparatus 9. Subscriber mode recognizing apparatus 3 also receives the information signal from the subscriber apparatus and can identify from the information signal whether the output signal from information providing apparatus 2 is being provided to the display terminal without being recorded and is being provided to the recorder. Charging apparatus 4 charges a different amount in the case that the output signal is being provided to the display terminal without being recorded and the output signal is being provided to the recorder.

The outstanding Official Action rejects Applicant's claims by combining Saito, Durden and Lett. Saito discloses on-demand programming. Durden allows a user to record a program (Pre-Buy) and to view a program (Buy). Durden does not disclose a charger which charges a different amount for the output signal to be provided to the display terminal and for the output signal to be provided to the recorder. Lett, Fig. 9 discloses a pay-per-view program ("Terminator") were the user is given the options of purchase, record or watch. It should be

noted, however, that neither recording nor watching can occur until the purchase is completed. In particular, Lett discloses at Col. 14, lines 53-55:

> Of course, if the event is a pay-per-view event, a purchase sequence must occur before the program can actually be recorded or watched. (Emphasis Added).

Thus, Applicant's representative wishes to note that while Lett will permit one program to be viewed with no charge and another program to be recorded with a charge, the program being viewed (without being recorded) and the program being recorded are different programs.

Applicant acknowledges with thanks the courtesy extended to Applicant's representative by Examiner Parry during the personal interview.

During the course of the personal interview, the Examiner referred Applicant's representative to the preview option which is disclosed in the art of record. The Examiner's position was that a preview was a) free; and b) not recorded. The Examiner then referred to the scenario were a movie which could be recorded required payment of a fee while a preview of the movie could not be recorded and did not require a fee. On that basis, the Examiner took the position that the previous rejection of record was appropriate.

Applicant's representative have amended claims 12 and 13 to refer to "a program having a title." A program and a preview of that program are not the same thing. Applicant's claim 12 thus recites:

> ... charging different amounts depending upon whether the transmitted program having said title is a) displayed without being recorded responsive to the first request or b) recorded responsive to the second request ...

In the above quote of the claim language, the program being provided to the display terminal without being recorded is the same program as the program being provided to the recorder. This is different from the prior art of record were a preview (i.e. one program) is displayed while a full length version of a movie (i.e. another program) is being provided to a recorder. As the feature of charging different amounts (depending upon whether an identical program is being a) displayed without recording or b) recorded) is not disclosed by the art of record, claim 12 is patentable over the art of record.

Claim 13, while not identical to claim 12, is also patentable for reasons similar to those set forth above regarding claim 12.

Claims 21 and 22 are newly added and use additional language to distinguish between a movie and a preview of that movie (i.e. "a shortened version of said program"). Again, the prior art distinguishes between previews and full length versions of movies that are previewed. The prior art does not charge different amounts for the same program. For this additional reason, claims 21 and 22 are patentable over the art of record.

In view of the amendments and arguments set forth above, the above-identified application is in condition for allowance which action is respectfully requested.

Respectfully submitted,

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LEA/nm

Attachment: Status of Claims

Dated: December 21, 2009

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The Director is hereby authorized to charge or credit Deposit Account No. **18-0350** for any additional fees, or any underpayment or credit for overpayment in connection herewith.

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December 21, 2009

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